

DRAFT PROTOCOL CONCERNING CO-OPERATION IN COMBATING POLLUTION
EMERGENCIES IN THE SOUTH PACIFIC REGION

THE PARTIES TO THIS PROTOCOL:

BEING PARTIES to The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region adopted in on,

CONSCIOUS that the exploration, development and use of offshore and near shore minerals and the use of hazardous substances, as well as related vessel traffic, pose the threat of significant pollution emergencies in the South Pacific region,

AWARE that the islands of the region are particularly vulnerable to damage resulting from significant pollution due to the sensitivity of their ecosystems and their economic reliance on the continuous utilization of their coastal areas,

RECOGNIZING that in the event of a pollution emergency or threat thereof, prompt and effective action should be taken initially at the national level to organize and co-ordinate prevention, mitigation and cleanup activities,

RECOGNIZING FURTHER the importance of rational preparation and mutual co-operation and assistance in responding effectively to pollution emergencies or the threat thereof,

DETERMINED to avert ecological damage to the marine environment and coastal areas of the South Pacific region through the adoption of national contingency plans to be co-ordinated with appropriate bilateral and sub-regional contingency plans.

HAVE AGREED as follows:

Article 1

Definitions

For the purposes of this Protocol:

- (a) "Convention" means The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region;
- (b) "South Pacific Region" means the Convention Area as defined in article 2 of the Convention and adjacent coastal areas;
- (c) "related interests" of a Party, refer, inter alia, to:
 - (i) maritime, coastal, port, or estuarine activities;
 - (ii) fishing activities and the management and conservation of living and non-living marine resources, including coastal ecosystems;
 - (iii) the cultural value of the area concerned and the exercise of traditional customary rights therein;
 - (iv) the health of the coastal population;
 - (v) tourist and recreational activities,
- (d) "pollution incident" means a discharge or significant threat of a discharge of oil or other hazardous substance, however caused, resulting in pollution or an imminent threat of pollution to the marine and coastal environment or which adversely affects the related interests of one or more of the Parties and of a magnitude that requires emergency action or other immediate response for the purpose of minimizing its effects or eliminating its threat.

Article 2

Application

This Protocol applies to pollution incidents in the South Pacific Region.

Article 3

General

1. The Parties to this Protocol shall, within their respective capabilities, co-operate in taking all necessary measures for the protection of the South Pacific Region from the threat and effects of pollution incidents.

2. The Parties shall, within their respective capabilities, establish and maintain, or ensure the establishment and maintenance of, the means of preventing and combating pollution incidents, and reducing the risk thereof. Such means shall include the enactment, as necessary, of relevant legislation, the preparation of contingency plans, the development or strengthening of the capability to respond to a pollution incident and the designation of a national authority responsible for the implementation of this Protocol.

Article 4

Exchange of Information

Each Party shall periodically exchange with other Parties, either directly or through the Organization, current information relating to the implementation of this Protocol, including the identification of the officials charged with carrying out the activities covered by it, and information on its laws, regulations, institutions and operational procedures relating to the prevention and the means of reducing and combating the harmful effects of pollution incidents.

Article 5

Communication of information concerning, and
reporting of, pollution incidents

1. Each Party shall establish appropriate procedures to ensure that information regarding pollution incidents is reported as rapidly as possible and shall, inter alia:

- (a) require appropriate officials of its government to report to it the occurrence of any pollution incident which comes to their attention;
- (b) require masters of vessels flying its flag and persons in charge of offshore facilities operating under its jurisdiction to report to it the existence of any pollution incident involving their vessel or facilities;
- (c) establish procedures to encourage masters of vessels flying its flag or of its registry to report, to the extent practicable, the existence of any pollution incident involving their vessel to any coastal State in the South Pacific Region which they deem likely to be seriously affected;
- (d) request masters of all vessels and pilots of all aircraft operating in the vicinity of its coasts to report to it any pollution incident of which they are aware.

2. In the event of receiving a report regarding a pollution incident, each Party shall promptly inform all other Parties whose interests are likely to be affected by such incident as well as the flag state of any vessel involved in it. Each Party shall also inform the Organization and, directly or through the Organization, the competent international organizations. Furthermore, it shall inform, as soon as feasible, such other Parties and organizations of any measures it has itself taken to minimize or reduce pollution or the threat thereof.

Article 6

Mutual Assistance

1. Each Party requiring assistance to deal with a pollution incident may request, either directly or through the Organization, the assistance of the other Parties. The Party requesting assistance shall specify the type of assistance it requires. The Parties whose assistance is requested under this article shall, within their capabilities, provide this assistance based on an agreement with the requesting Party or Parties and taking into account, in particular in the case of pollution by hazardous substances other than oil, the technological means available to them. If the Parties responding jointly within the framework of this article so request, the Organization may co-ordinate the activities undertaken as a result.

2. Each Party shall facilitate the movement of technical personnel, equipment and material necessary for responding to a pollution incident, into, out of and through its territory.

Article 7

Operational Measures

Each Party shall, within its capabilities, take steps including those outlined below in responding to a pollution incident:

- (a) make a preliminary assessment of the incident, including the type and extent of existing or likely pollution effects;
- (b) promptly communicate information concerning the situation to other Parties and the Organization pursuant to article 5;
- (c) promptly determine its ability to take effective measures to respond to the pollution incident and the assistance that might be required and to communicate any request for such assistance to the Party or Parties concerned or the Organization in accordance with article 6;

- (d) consult, as appropriate, with other affected or concerned Parties or the Organization in determining the necessary response to a pollution incident;
- (e) carry out the necessary measures to prevent, eliminate or control the effects of the pollution incident, including surveillance and monitoring of the situation.

Article 8

Sub-Regional Arrangements

1. The Parties should develop and maintain appropriate sub-regional arrangements, bilateral or multilateral, in particular to facilitate the steps provided for in articles 6 and 7 above and taking into account the general provisions of this Protocol.
2. The Parties to any arrangements shall notify the other Parties to this Protocol as well as the Organization of the conclusion of such sub-regional arrangements and the provisions thereof.

Article 9

Institutional Arrangements

The Parties designate the Organization to carry out the following functions:

- (a) assisting Parties, upon request, in the communication of reports of pollution incidents in accordance with article 5;
- (b) assisting Parties, upon request, in the organization of a response action to a pollution incident, in accordance with article 6;
- (c) assisting Parties, upon request, in the following areas:

- (i) the preparation, periodic review, and updating of the contingency plans, referred to in paragraph 2 of article 3, with a view, inter alia, to promoting the compatibility of the plans of the Parties; and
 - (ii) the identification of training courses and programmes;
- (d) assisting the Parties upon request, on a regional or sub-regional basis, in the following areas:
 - (i) the co-ordination of emergency response activities; and
 - (ii) the provision of a forum for discussions concerning emergency response and other related topics;
- (e) establishing and maintaining liaison with:
 - (i) appropriate regional and international organizations; and
 - (ii) appropriate private organizations, including producers and transporters of substances which could give rise to a pollution incident in the South Pacific Region and clean-up contractors and co-operatives;
- (f) maintaining an appropriate current inventory of available emergency response equipment;
- (g) disseminating information related to the prevention and control of pollution incidents and the removal of pollutants resulting therefrom;
- (h) identifying or maintaining emergency response communications systems;
- (i) encouraging research by the Parties, as well as by appropriate international and private organizations, on the environmental effects of pollution incidents, the environmental effects of pollution incident control materials and other matters related to pollution incidents;
- (j) assisting Parties in the exchange of information pursuant to article 4; and
- (k) preparing reports and carrying out other duties assigned to it by the Parties.

Article 10

Meetings of the Parties

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Contracting Parties to the Convention, held pursuant to article 22 of the Convention. The Parties to this Protocol may also hold extraordinary meetings as provided for in article 22 of the Convention.
2. It shall be the function of the meetings of the Parties:
 - (a) to review the operation of this Protocol and to consider special technical arrangements and other measures to improve its effectiveness;
 - (b) to consider any measures to improve co-operation under this Protocol including, in accordance with article 24 of the Convention, amendments to this Protocol.

Article 11

Relationship between this Protocol and the Convention

1. The provisions of the Convention relating to any Protocol shall apply with respect to the present Protocol.
2. The rules of procedure and the financial rules adopted pursuant to article 22 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree otherwise.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at(place)..... on(date)..... in a single copy in the English and French languages, the two texts being equally authoritative.

DRAFT PROTOCOL FOR THE PREVENTION OF POLLUTION
OF THE SOUTH PACIFIC REGION BY DUMPING

THE PARTIES TO THE PROTOCOL,

BEING PARTIES to the Convention for the Protection of the
Natural Resources and Environment of the South Pacific
Region, adopted in on,

RECOGNIZING the danger posed to the marine environment by
pollution caused by the dumping of waste or other matter,

CONSIDERING that they have a common interest to protect the
South Pacific Region from this danger, taking into account
the unique environmental quality of the region,

DESIRING to enter into a regional agreement consistent with
the Convention on the Prevention of Marine Pollution by
Dumping of Wastes and other Matter adopted in London on 13
November 1972 as provided in article VIII thereof according
to which the Contracting Parties to that Convention have
undertaken to endeavour to act consistently with the
objectives and provisions of such regional agreements;

HAVE AGREED AS FOLLOWS:

Article 1

Definitions

For the purpose of this Protocol "Convention" means the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region.

Article 2

Geographical Coverage

The area to which this Protocol applies (hereinafter referred to as the "Protocol Area") shall be the Convention Area as defined in article 2 of the Convention together with the continental shelf of a Party where it extends, in accordance with international law, outward beyond the Convention Area.

Article 3

General Obligations

1. The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Protocol Area by dumping.
2. Dumping within the territorial sea and the exclusive economic zone or onto the continental shelf of a Party as defined in international law shall not be carried out without the express prior approval of that Party, which has the right to permit, regulate and control such dumping taking fully into account the provisions of this Protocol and after due consideration of the matter with other Parties which by reason of their geographical situation may be adversely affected thereby.

3. National laws, regulations and measures adopted by the Parties shall be no less effective in preventing, reducing and controlling pollution by dumping than the relevant internationally recognized rules and procedures relating to the control of dumping established within the framework of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, adopted in London in 1972.

Article 4

Prohibited Substances

1. The dumping in the Protocol area of wastes or other matter listed in annex I to this Protocol is prohibited except as provided in this Protocol.

2. No provision of this Protocol is to be interpreted as preventing a Party from prohibiting, insofar as that Party is concerned, the dumping of wastes or other matter not mentioned in annex I. That Party shall notify such measures to the Organisation.

Article 5

Special Permits

The dumping in the Protocol area of wastes or other matter listed in annex II to this Protocol requires, in each case, a prior special permit.

Article 6

General Permits

The dumping in the Protocol area of all wastes or other matter not listed in annexes I and II to this Protocol requires a prior general permit.

Article 7

Factors governing the issue of permits

The permits referred to in articles 5 and 6 above shall be issued only after careful consideration of all the factors set forth in annex III to this Protocol. The Organisation shall receive records of such permits.

Article 8

Allocation of Substances to Annexes

Substances are allocated in Annexes I and II of this Protocol in accordance with Annex IV.

Article 9

Force majeure

The provisions of articles 4, 5 and 6 shall not apply when it is necessary to secure the safety of human life or of vessels, aircraft, platforms or other man-made structures at sea in cases of force majeure caused by stress of weather, or in any case which constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, if dumping appears to be the only way of averting the threat and if there is every probability that the damage consequent upon such dumping will be less than would otherwise occur. Such dumping shall be so conducted as to minimise the likelihood of damage to human or marine life. Such dumping shall immediately be reported to the Organisation and, either through the Organisation or directly, to any Party or Parties likely to be affected, together with full details of the circumstances and of the nature and quantities of the wastes or other matter dumped.

Article 10

Emergencies

1. A Party may issue a special permit as an exception to article 4, in emergencies arising in the Protocol area, posing unacceptable risk relating to human health and admitting no other feasible solution. Before doing so the Party shall consult any other country or countries that are likely to be affected and the Organization which, after consulting other Parties, and international organizations as appropriate, shall in accordance with article 15 promptly recommend to the Party the most appropriate procedures to adopt. The Party shall follow these recommendations to the maximum extent feasible consistent with the time within which action must be taken and with the general obligation to avoid damage to the marine environment and shall inform the Organization of the action it takes. The Parties pledge themselves to assist one another in such situations.

/2. This article does not apply with respect to materials in whatever form produced for biological and chemical warfare referred to in paragraph 6 of Annex 1.A./

3. Any Party may waive its rights under paragraph (1) at the time of, or subsequent to ratification, acceptance or approval of, or accession to this Protocol.

Article 11

Issuance of Permits

1. Each Party shall designate an appropriate authority or authorities to:
 - (a) issue the special permits provided for in article 5 and in the emergency circumstances provided for in article 10;
 - (b) issue the general permits provided for in article 6;
 - (c) keep records of the nature and quantities of the wastes or other matter permitted to be dumped and of the location, date and method of dumping;

- (d) monitor individually, or in collaboration with other Parties, and competent international organizations, the condition of the Protocol Area for the purposes of this Protocol.

2. The appropriate authority or authorities of each Party shall issue the permits provided for in articles 5 and 6 and in the emergency circumstances provided for in article 10 in respect of the wastes or other matter intended for dumping:

- (a) loaded in its territory or at its off-shore terminals;
- (b) loaded by vessels flying its flag or vessels or aircraft of its registry when the loading occurs in the territory or at the offshore terminals of a State not Party to this Protocol.

3. In issuing permits under 1 (a) and (b) above the appropriate authority or authorities shall comply with Annex III together with such additional criteria, measures and requirements as they may consider relevant.

Article 12

Implementation and Enforcement

1. Each Party shall apply the measures required to implement this Protocol to all:

- (a) vessels flying its flag and vessels and aircraft of its registry;
- (b) vessels and aircraft loading in its territory or at its offshore terminals wastes or other matter which are to be dumped;
- (c) vessels, aircraft and fixed or floating platforms believed to be engaged in dumping in areas under its jurisdiction in this matter.

2. Each Party shall take in its territory appropriate measures to prevent and punish conduct in contravention of the provisions of this Protocol.

3. The Parties agree to co-operate in the development of procedures for the effective application of this Protocol particularly on the high seas, including procedures for the reporting of vessels and aircraft observed dumping in contravention of the Protocol.

4. This Protocol shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, each Party shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by it act in a manner consistent with the object and purpose of this Protocol and shall inform the Organization accordingly.

Article 13

Adoption of other measures

Nothing in this Protocol shall affect the right of each Party to adopt other measures, in accordance with the principles of international law, to prevent dumping.

Article 14

Reporting of dumping incidents

Each Party undertakes to issue instructions to its maritime inspection vessels and aircraft and to other appropriate services to report to its authorities any incidents or conditions in the Protocol area which give rise to suspicions that dumping in contravention of the provisions of this Protocol has occurred or is about to occur. That Party shall, if it considers it appropriate, report accordingly to the Organization and to any other Party concerned.

Article 15

Institutional Arrangements

The Parties designate the Organization to carry out the following functions:

- (a) to assist the Parties, upon request, in the communication of records in accordance with articles 9 and 14;
- (b) to convey to the Parties concerned all notifications received by the Organization in accordance with articles 4(2) and 10;
- (c) to transmit to the International Maritime Organization as the organization responsible for the secretariat functions under the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, records and any other information received in accordance with article 7;
- (d) to keep informed on evolving international standards and the results of research and investigation, and to advise meetings of Parties to this Protocol of such development and any modification of the Annexes which may become desirable.
- (e) to carry out other duties assigned to it by the Parties.

Article 16

Meetings of the Parties

1. Ordinary meetings of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Contracting Parties to the Convention held pursuant to article 22 of the Convention. The Parties to this Protocol may also hold extraordinary meetings in conformity with article 22 of the Convention.

2. It shall be the function of the meetings of the Parties to this Protocol to:

- (a) keep under review the implementation of this Protocol, and to consider the efficacy of the measures adopted and the need for any other measures, in particular in the form of annexes;
- (b) study and consider the records of the permits issued in accordance with articles 5, 6, 7 and the emergency situation in article 9, and of the dumping which has taken place;
- (c) review and amend as required any annex to this Protocol taking into account Annex IV;

- (d) adopt as necessary guidelines for the preparation of records and procedures to be followed in submitting such records for the purposes of article 7;
- (e) develop, adopt and implement in consultation with the Organization and other competent international organizations procedures pursuant to article 10 including basic criteria for determining emergency circumstances and procedures for consultative advice and the safe disposal, storage or destruction of matter in such circumstances;
- (f) invite, as necessary, the appropriate scientific body or bodies to collaborate with and to advise the Parties and the Organization on any scientific or technical aspects relevant to this Protocol, including particularly the content and applicability of the annexes;
- (g) perform such other functions as may be appropriate for the implementation of this Protocol.

3. The adoption of amendments to the annexes to this Protocol pursuant to article 24 of the Convention shall require a /three fourths/ majority vote of the Parties to this Protocol.

Article 17

Relationship between this Protocol and the Convention

1. The provisions of the Convention relating to any protocol shall apply with respect to the present Protocol.

2. The rules of procedures and the financial rules adopted pursuant to article 22 of the Convention shall apply with respect to this Protocol, unless the Parties to this Protocol agree otherwise.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Protocol.

DONE at on in a single copy in the English and French languages, the two texts being equally authoritative.

ANNEX 1

- A -

The following substances and materials are listed for the purposes of article 4 of this Protocol.

1. Organohalogen compounds.
2. Mercury and mercury compounds.
3. Cadmium and cadmium compounds.
4. Persistent plastics and other persistent synthetic materials, for example, netting and ropes, which may remain in suspension in the sea in such a manner as to interfere materially with fishing, navigation or other legitimate uses of the sea.
5. Crude oil and its wastes, refined petroleum products, petroleum distillate residues and any mixtures containing any of these taken on board for the purpose of dumping.
6. Materials in whatever form (e.g. solids, liquids, semi-liquids, gases, or in a living state) produced for biological and chemical warfare.
7. Organophosphorous compounds.

- B -

Annex I-A does not apply to substances, other than substances produced for biological or chemical warfare, which are rapidly rendered harmless by physical, chemical or biological processes in the sea provided they do not:

- make edible marine organisms unpalatable; or
- endanger human health or that of marine biota.

The consultative procedure provided for under article 10 shall be followed by a Party if there is doubt about the harmlessness of the substance.

- C -

This annex does not apply to wastes or other materials, such as sewage sludges and dredged spoils, containing the matters referred to in paragraph 1 - 5 of Section A above as trace contaminants. The dumping of such wastes shall be subject to the provisions of Annexes II and III as appropriate.

ANNEX II

The following substances and materials requiring special care are listed for the purposes of article 5.

A. Wastes containing a significant amount of the matters listed below:

arsenic)
lead)
copper) and their compounds
zinc)

organosilicon compounds
cyanides
fluorides
pesticides and their by-products not covered in Annex I.

B. In the issue of permits for the dumping of acids and alkalis, consideration shall be given to the possible presence in such wastes of the substances listed in paragraph A and to the following additional substances:

beryllium)
chromium)
nickel) and their compounds'
vandium)

C. Containers, scrap metal and other bulky wastes liable to sink to the sea bottom which may present a serious obstacle to fishing or navigation.

D. Substances which, though of a non-toxic nature, may become harmful due to the quantities in which they are dumped, or which are liable to seriously reduce amenities.

ANNEX III

Provisions to be considered in establishing criteria governing the issue of permits for the dumping of matter at sea, taking into account article 7, include:

A - Characteristics and composition of the matter

1. Total amount and average composition of matter dumped (e.g. per year).
2. Form, e.g. solid, sludge, liquid, or gaseous.
3. Properties: physical (e.g. solubility and density), chemical and biochemical (e.g. oxygen demand, nutrients) and biological (e.g. presence of viruses, bacteria, yeasts, parasites).
4. Toxicity
5. Persistence: physical, chemical and biological.
6. Accumulation and biotransformation in biological materials or sediments.
7. Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.
8. Probability of production of taints or other changes reducing marketability of resources (fish, shellfish, etc.).
9. In issuing a permit for dumping, Parties should consider whether an adequate scientific basis and sufficient knowledge of the composition and characteristics of the waste or other matter proposed for dumping exist for assessing the impact of such material on the marine environment and human health.

B - Characteristics of dumping site and method of deposit

1. Location (e.g. co-ordinates of the dumping area, depth and distance from the coast), location in relation to other areas (e.g. amenity areas, spawning, nursery and fishing areas and exploitable resources).
2. Rate of disposal per specific period (e.g. quantity per day, per week, per month).

3. Methods of packaging and containment, if any.
4. Initial dilution achieved by proposed method of release.
5. Dispersal characteristics (e.g. effects of currents, tides and wind on horizontal transport and vertical mixing).
6. Water characteristics (e.g. temperature, pH, salinity, stratification, oxygen indices of pollution - dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD), - nitrogen present in organic and mineral form including ammonia, suspended matter, other nutrients and productivity).
7. Bottom characteristics (e.g. topography, geochemical and geological characteristics and biological productivity).
8. Existence and effects of other dumpings which have been made in the dumping area (e.g. heavy metal background reading and organic carbon content).
9. In issuing a permit for dumping, Parties should consider whether an adequate scientific basis exists for assessing the consequences of such dumping, as outlined in this Annex, taking into account seasonal variations.

C - General considerations and conditions

1. Possible effects on amenities (e.g. presence of floating or stranded materials, turbidity, objectionable odour, discolouration and foaming).
2. Possible effects on marine life, fish and shellfish culture, fish stocks and fisheries, seaweed harvesting and culture.
3. Possible effects on other uses of the sea (e.g. impairment of water quality for industrial use, underwater corrosion of structure, interference with ship operations from floating materials, interference with fishing or navigation through deposit of waste or solid objects on the sea floor and protection of areas of special importance of scientific or conservation purposes).
4. The practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping at sea.

D - References

Reference should also be made to "Guidelines for the Implementation and Uniform Interpretation of Annex III" as adopted by the Consultative Meeting of Contracting Parties to the Convention on the Prevention of Marine Pollution By Dumping of Wastes and Other Matter 1972.

ANNEX IV

Allocation of Substances to Annexes

1. Substances are allocated to Annexes I and II on the grounds of any combination of the following criteria:

Persistence and degradability,

Bioaccumulation potential,

Toxicity to marine life,

Toxicity to man, domestic animals, marine mammals and birds
preying on marine organisms,

Carcinogenicity and mutagenicity,

Ability to interfere with other legitimate uses of the sea.

2. Annex I substances are those which have a high degree of persistence coupled with:

.1 the ability to accumulate to harmful levels in terms of toxicity to marine organisms and their predators, to domestic animals or to man; or

.2 the ability to accumulate through marine pathways to levels harmful in terms of carcinogenicity or mutagenicity to domestic animals or to man; or

.3 the ability to cause interference with fisheries, amenities or other legitimate uses of the sea.

3. Annex II substances are all those considered suitable for inclusion in the Annexes except for those allocated to Annex I.
